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OFFICE OF
INSURANCE COMMISSIONER

In the Matter of)

PROGRESSIVE MAX)
INSURANCE COMPANY,)

Respondent.)

No. D07-189

**CONSENT ORDER
IMPOSING A FINE**

COMES NOW the Insurance Commissioner of the State of Washington, pursuant to the authority provided in RCW 48.01.020, RCW 48.02.080, and RCW 48.05.185, and having reviewed the official records and files of the Office of the Insurance Commissioner, makes the following Findings of Fact and Conclusions of Law:

FINDINGS OF FACT:

1. Progressive Max Insurance Company ("Progressive Max"), a member of the Progressive Insurance Group, is authorized to conduct the business of insurance in Washington State and, therefore, is subject to Title 48 RCW and Chapter 284 WAC.
2. RCW 48.19.040(6) provides that no insurer shall make or issue an insurance contract or policy except in accordance with its filing then in effect.
3. Under Filing No. WA200508RATES, effective October 27, 2005, Progressive Max implemented a new vehicle rating algorithm. Following implementation of the vehicle rating algorithm, Progressive Max informed the Washington State Office of Insurance Commissioner ("OIC") that some vehicle models were either programmed incorrectly or not programmed at all. More specifically, Progressive Max determined that 676 vehicles on 614 policies were rated incorrectly between October 27, 2005 and March 16, 2006. To Progressive Max's knowledge, all of these policies received lower rates than the rates that were filed with, and approved by, the OIC.
4. For the affected policies, Progressive Max left the incorrect rates in place for the six-month policy term, and then charged consumers the correct rates at the next renewal period.

5. On or about May 4, 2005, Progressive Max entered into Consent Order No. D05-26. This Consent Order imposed a fine of \$190,732, of which \$95,366 (half the total amount) was suspended upon the condition that Progressive Max commit no further violations of the statutes and/or regulations that were the subject of that Consent Order, which included RCW 48.19.040(6), for a period of two years. In this case, Progressive Max violated RCW 48.19.040(6) and said violations occurred during the aforementioned two year period. As such, the \$95,366 suspended under Consent Order No D05-26 is immediately due and payable.

6. Progressive Max has remedied the programming errors at issue in this matter, and correctly implemented the vehicle rating algorithm.

7. Progressive Max self-reported the violations. Progressive Max was candid and cooperative with the OIC during the investigation and resolution of this matter.

CONCLUSIONS OF LAW:

1. Progressive Max violated RCW 48.19.040(6) by using rates that differed from the rates that were filed and approved by the OIC.

2. RCW 48.05.185 authorizes the Insurance Commissioner to impose a fine in lieu of or in addition to the suspension or revocation of an insurer's certificate of authority.

CONSENT TO ORDER:

1. Progressive Max consents to entry of this Order, and acknowledges its duty to comply fully with all applicable laws and regulations of the State of Washington. Progressive Max knowingly and voluntarily waives further administrative or legal challenge to the actions taken, or to be taken, by the Insurance Commissioner, related to the subject matter of this Order. The Insurance Commissioner consents to resolve this matter on the condition that Progressive Max pay the fine set forth below, and on the condition that Progressive Max carry out the provision of, and fully comply with, the Compliance Plan set forth in Exhibit A.

2. Within thirty days of the entry of this Order, Progressive Max will pay to the Insurance Commissioner a fine in the amount of \$1,000 (one thousand dollars).

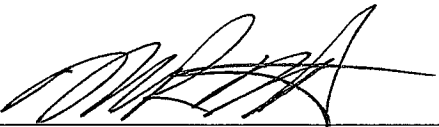
3. Progressive Max will immediately pay the \$95,366 suspended fine amount pursuant to Consent Order No. D05-26.

4. Failure to pay the fine, in full, within thirty days of the entry of this Order, or failure to comply with the Compliance Plan set forth in Exhibit A, shall constitute grounds for suspension or revocation of the Certificate of Authority held by Progressive

Max in Washington State. It may also result in a civil action being brought by the Attorney General on behalf of the Insurance Commissioner, to recover the fine.

Executed this 7th day of August, 2007.

PROGRESSIVE MAX INSURANCE COMPANY

By: 
Michael R. Uth
Secretary

Pursuant to the foregoing Findings of Fact, Conclusions of Law, and Consent to Order, the Insurance Commissioner orders as follows:

ORDER:

1. Progressive Max is ordered to pay, within thirty days of the entry of this Order, a fine in the amount of \$1,000 (one thousand dollars).
2. Progressive Max is ordered to immediately pay the \$95,366 suspended fine amount imposed under, and pursuant to, Consent Order No. D05-26.
3. Failure to pay the fine timely, and in full, will constitute grounds for suspension or revocation of the Certificate of Authority held by Progressive Max in Washington State. It will also result in a civil action being brought by the Attorney General on behalf of the Insurance Commissioner, to recover the fine.

Executed this 9th day of AUGUST, 2007.

MIKE KREIDLER
Insurance Commissioner

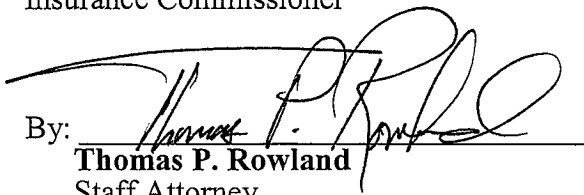
By: 
Thomas P. Rowland
Staff Attorney
Legal Affairs Division

EXHIBIT A - COMPLIANCE PLAN

A. PURPOSE OF AND CONSIDERATION FOR THE COMPLIANCE PLAN.

Progressive Max Insurance Company ("Company") enters into this Compliance Plan ("Plan") with the Washington State Office of Insurance Commissioner ("OIC") to promote compliance by the Company with the requirements of the laws and regulations of the State of Washington. Concurrently with the execution of the Plan, the Company is also entering into a Consent Order with the OIC. The Plan is attached to the Consent Order as "Exhibit A" and is fully incorporated into the Consent Order. Moreover, the Company's obligations under this Plan are made a part of the Consent Order and constitute obligations under the Consent Order as though this Plan and the Company's obligations under it were fully set forth in the Consent Order.

B. TERM OF THE COMPLIANCE PLAN.

The effective date of this Plan shall be the date of entry of the Consent Order, on which date this Plan shall become final and binding.

C. THE COMPLIANCE PLAN.

1. Internal Audit.

- a. **Information to OIC:** The Company will conduct two annual audits. Within thirty (30) days of the effective date of this Plan, the Company shall establish an annual audit plan and schedule with regard to the violations included in the Consent Order, and shall forward a written copy of the plan and schedule to Christine Tribe, OIC Legal Affairs Division, Insurance 5000 Building, P.O. Box 40255, Olympia, WA 98504. Copies of each internal audit report on the two annual audits to be performed during the period of this Plan shall also be provided to OIC Legal Affairs Division within thirty days of the report being issued. Reports shall be issued no later than thirty days following the reporting period.
- b. **Internal Audit Obligations:** The Company shall provide its internal audit unit or division(s) with the Consent Order and shall direct its internal audit personnel to include the areas of violation in the annual internal audits conducted pursuant to this Plan.
- c. **Audit Scope:** Each annual audit shall encompass at least fifty (50) files for each of the violations listed in the Consent Order. If a violation is common to more than one line of business, the audit must include fifty (50) files for each line of


business found to be in violation. Each file audited must involve Washington insureds or beneficiaries.

- d. **Correction of Exceptions:** Any exception or deficiency identified by the internal audits conducted pursuant to this Plan shall be corrected. The Company agrees to advise OIC within sixty (60) days of the audit report of any corrective measures contemplated to address any such exceptions or deficiencies or any other areas requiring correction. The OIC shall then review these measure(s) and notify the company of any comments associated thereto. Unless the OIC requests modifications to the proposed corrective measure(s), the Company shall have sixty (60) days from the end of the OIC's review period to implement the measure(s). However, should the Company need longer than sixty (60) days to correct any exception or deficiency, it may contact the OIC Legal Affairs Division and request an extension to the sixty (60) day requirement.

D. MISCELLANEOUS

1. **Authority to Enter Plan:** The Companies give express assurance that under applicable laws, regulations and where applicable, their Articles and By-Laws, they have the authority to comply fully with the terms and conditions of this Plan, and that they will provide written notification to the other parties within ten days of any material change to this authority or of any violation of this Plan.

PROGRESSIVE MAX INSURANCE COMPANY

By: 

Michael R. Uth
Secretary